

West Valley City
And Horrocks Engineering, Inc., Engineering Design Services Agreement for
the 7200 West Widening Project from Approximately SR 201 to 3500 South

THIS AGREEMENT is made this _____ day of _____, 2009, by and between West Valley City, a municipal corporation of the State of Utah (hereinafter the "City"), and Horrocks Engineering, Inc., a Utah Corporation (hereinafter "Engineer").

W I T N E S S E T H :

WHEREAS, the City and Salt Lake County (hereinafter the "County") desire to widen 7200 West from approximately SR 201 South to 3500 South (hereinafter the "Project"); and

WHEREAS, the Project will be funded jointly by the City and County; and

WHEREAS, the City and County desire to have an independent engineering firm complete the work; and

WHEREAS, the City desires to contract with a qualified professional engineer to prepare the preliminary design for the Project; and

WHEREAS, Engineer is a qualified professional engineering firm able to provide the preliminary design for the Project; and

NOW, THEREFORE, for and in consideration of the mutual covenants made herein, the parties agree as follows:

A G R E E M E N T :

1. Engineer's Obligations.

- a. **The Work:** Engineer agrees to complete the work as provided in Exhibit A "Detailed Work Plan."
- b. **Compensation:** The compensation shall be paid as indicated in the Cost Estimate included Exhibit "B" represents the entire amount of compensation the City and County will pay the Engineer for the Project. Engineer will perform the aforementioned services in a professional manner using the degree of care and skill that is normally employed by Engineers on similar projects of equal complexity, practicing in the same locality, and at the date the Services are provided.

- c. **Project Schedule:** Engineer shall complete the project within nine (9) months following execution of this Agreement.

2. **CITY's Obligations.**

- a. In consideration for the work performed by Engineer, as set forth in Exhibit A, the City agrees to pay Engineer an amount not to exceed Four Hundred and Fifty Thousand Dollars (\$450,000.00). Funds shall be paid to Engineer within thirty (30) days from receipt of invoice for work performed.
- b. The City will provide the Engineer with all the plans and specifications necessary to complete the Project.

3. **Term of Agreement.** This Agreement shall commence upon execution by the parties and shall continue for a period of not more than nine (9) months, or until either of the following occurs:

- a. Engineer completes the work set forth in this Agreement.
- b. The City has paid Engineer the maximum compensation amount of Four Hundred and Fifty Thousand Dollars (\$450,000).

The City and Engineer understand that time is of the essence and expect the work to be completed within nine (9) months of the execution of this Agreement. However, the expected completion time may be extended in writing by the City, at the mutual agreement of the parties.

4. **Termination.**

- a. In the event Engineer fails to comply with any provisions of this Agreement, or if the progress or quality of the work is unsatisfactory, the City may serve written notice thereof upon Engineer, and if Engineer fails within a period of ten (10) days thereafter to correct failure, the City may terminate this Agreement upon written notice to Engineer. Upon such termination, Engineer shall immediately cease its performance of this Agreement and the City shall determine and pay to Engineer the amount due for such satisfactory work up to the effective date of Termination. Conditions which may result in termination of this Agreement specifically include, but are not limited to, failure to comply with any applicable federal, state, or local laws or regulations. Notwithstanding the above, Engineer shall not be relieved of liability to the City for damages sustained by virtue of any breach by Engineer.

- b. The City also reserves the right to terminate this Agreement at any time for its convenience, or in the event that it abandons or indefinitely postpones the program. Such terminations shall be accomplished by written notice to that effect, delivered to Engineer. Upon receipt of such notice, Engineer shall immediately cease work. Payment to Engineer shall be made for work performed prior to receipt by Engineer of such termination notice, together with Engineer's cost for closing down its work, and Engineer shall have no claim for loss of anticipated profits or any additional compensation.
 - c. In the event the City fails to substantially comply with the provisions of this Agreement, or if it fails to timely pay compensation due to Engineer, Engineer may serve written notice thereof upon the City, and, if the City fails within a period of seven (7) working days thereafter to correct such failure, Engineer may terminate this Agreement upon written notice to the City. Engineer accepts no liability for damages or delays that result from its suspension of work.
- 5. **CITY Representative.** The City hereby appoints Dan Johnson as the City's representative to assist in the administrative management of this Agreement.
- 6. **Additional Conditions.**
 - a. City will furnish all applicable plans needed to complete the work.
 - b. Neither party shall be responsible to the other party for any special, incidental, indirect, penal or consequential damages (included lost profits) by either City or Engineer or for which either party may be liable to any third party.
- 7. **Independent Contractor.** It is understood and agreed that Engineer is an independent contractor, and that the officers and employees of Engineer shall not be employees, officers, or agents of the City; nor shall they represent themselves to be City employees; nor shall they be entitled, as a result of the execution of this Agreement, to any benefits or protections that would otherwise be available to City employees.
- 8. **Conflict of Interest.** Engineer warrants that no City employee, official, or agent has been retained by Engineer to solicit or secure this Agreement upon an agreement or understanding to be or to become an officer, agent, or employee of Engineer, or to receive a commission, percentage, brokerage, contingent fee, or any other form of compensation.
- 9. **Indemnification.** Engineer agrees to indemnify, and hold the City and/or County harmless from and against lawsuits, damages, and expenses, including reasonable court costs and attorney's fees, by reason of a claim and/or liability imposed, or claimed, and/or threatened against the City and/or County for damages because of bodily injury,

death, and/or property damages resulting from the performance of services under this Agreement, to the extent that such bodily injuries, death, and/or property damages are attributable to the negligence of Engineer and/or Engineer's servants, agents, employees, and/or assigns. As used in this section, the City and/or shall also refer to the officers, agents, assigns, volunteers, and employees of the City and/or City. The indemnification required by this section shall not apply to any bodily injuries, death, and/or property damages that are attributable to the negligence of the City and/or City.

Engineer will maintain insurance coverage throughout the term of the Agreement. Insurance coverage will include:

1)	Worker's Compensation	
	State	Statutory
	Employer's Liability	\$100,000
2)	Comprehensive General Liability	
	Bodily Injury and Property Damage	\$1,000,000
	Combined Single Limit	\$2,000,000
3)	Automobile Liability	
	Combined Single Limit	\$1,000,000
4)	Professional Liability	\$1,000,000

10. **Subcontract Assignment.** This Agreement does not create any right or benefit to anyone other than City and Engineer, and neither party shall assign any rights or interest herein without prior written consent of the other party.
11. **Attorney's Fees.** In the event of default hereunder, the defaulting party agrees to pay all costs incurred by the non-defaulting party in enforcing this Agreement, including reasonable attorney's fees, whether by in-house or outside counsel and whether incurred through initiation of legal proceedings or otherwise.
12. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain valid and binding upon the parties.
13. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and no statement, promise, or inducements made by either party or agents for either party, which are not contained in this written Agreement, shall be binding or valid.
14. **Modification of Agreement.** This Agreement may be modified only by written amendment executed by all of the parties hereto.

15. **Applicable Law.** This Agreement shall be governed by the laws of the State of Utah.
16. **Notices.** All notices, requests, demands, and other communications required under this Agreement, except for normal, daily business communications, shall be in writing. Such written communication shall be effective upon personal delivery to any party or upon being sent by overnight mail service; by facsimile (with verbal confirmation of receipt); or by certified mail, return receipt requested, postage prepaid, and addressed to the respective parties as follows:

If to the Engineer: Horrocks Engineering, Inc.,
 2162 West Grove Parkway Suite 400
 Pleasant Grove, Utah 84062
 Phone: (801) 763-5100
 Facsimile: (801) 763-5101

If to the CITY: West Valley City Public Works Department
 Attn: Dan Johnson, P.E., City Engineer
 3600 South Constitution Blvd.
 West Valley City, Utah 84119
 Telephone: (801) 963-3270
 Facsimile: (801) 963-3540

Either party may change its address for purposes of this Agreement by giving written notice to the other party.

17. **Dispute Resolution.** If a claim or dispute arises out of or relates to the interpretation, application, enforcement, or performance of Services under this Agreement, both parties agree to attempt to resolve the claim or dispute (1) at a meeting between the principals within fifteen (15) days of receipt by either party of a notice and description of the dispute. If the claim or dispute cannot be resolved through mediation and unless otherwise mutually agreed, either party may file suit in an appropriate court in the state of Utah.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

WEST VALLEY CITY

Dennis J. Nordfelt, Mayor

ATTEST:

Sheri McKendrick, City Recorder

APPROVED AS TO FORM
WVC Attorney's Office

By: _____

Date: _____

Horrocks Engineering, Inc.

By: _____

Title: _____

STATE OF _____)
: ss.
COUNTY OF _____)

On this _____ day of _____, 2009, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he is the _____ [title] of **Horrocks Engineering, Inc.**, a corporation, and said document was signed by him on behalf of said corporation by authority of its bylaws or of a Resolution of its Board of Directors, and he acknowledged to me that said corporation executed the same.

Notary Public